

Notice of Allowability

Application No.

10/666,290

Examiner

Shumaya B. Ali

Applicant(s)

GANESH ET AL.

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 5/11/07.
2. ☒ The allowed claim(s) is/are 1-10,12-16.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 5/11/07.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Response to Amendment

The declaration under 37 CFR 1.132 filed 12/5/06 is sufficient to overcome the rejection of claim 1 based upon Christopher US 2002/0108610A and Greenberg US 5,976,072 because in both Christopher and Greenberg the tube extends well into the trachea, which creates tracheal stimulation, well below the location of the epiglottis as supported by the declaration. Thus, neither reference alone or in combination teaches the limitation of amended claim 1, the body sized such that when the distal end of the body is inserted into the mouth of the patient until the proximal end is disposed outside and adjacent to the patient's mouth, wherein in a fully deployed state, the distal end is disposed within the pharynx above the epiglottis and at a distance from the epiglottis, and at least one conduit in its fully deployed state, with connection means at its proximal end has its distal end disposed within the pharynx above the epiglottis and at a distance from the epiglottis.

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with John McNulty on 5/11/07.

The application has been amended as follows:

Delete abstract filed on 9/19/03.

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Enter new abstract as follows:

An oropharyngeal device for insertion into the mouth of a patient. The device includes a body having a distal end and a proximal end with a flange formed at the proximal end. The distal end is inserted into the mouth until the flange is disposed outside and adjacent to the patient's mouth. The flange keeps the proximal device from entering the mouth. The body is sized such that the distal end of the body is disposed within the pharynx above the epiglottis. The device includes a channel that forms an airway between the ends. The device also includes at least three separate conduits integrated into the body for administering oxygen, suctioning, and for assessing ventilation thorough end-tidal carbon dioxide monitoring. The conduits for oxygenation and suctioning extend through the body between its proximal and distal ends. The conduit for end-tidal carbon dioxide monitoring terminates within the channel.

Enter flowing changes to the claims:

In claim 1 line 9, enter --wherein in a fully deployed state-- after "patient's mouth".

In claim 1 lines 13-15, delete "with the channel have a proximate end and a distal end and with the channel sized to comprise means whereby the distal end is disposed within the pharynx above the epiglottis and at a distance from the epiglottis" and insert -- wherein the channel have a proximate end and a distal end and the channel sized to comprise connection means whereby, when, in a fully deployed state, the distal end is disposed within the pharynx above the epiglottis and at a distance from the epiglottis --.

In claim 1 line 20, delete "body and with said" and insert --body and said--.

In claim 1 line 21, delete "and with the at least one" and insert --wherein the at least one--.

In claim 1 line 22, delete "first conduit sized to comprise means whereby its distal end is disposed" and insert --first conduit in its fully deployed state with connection means at its proximal end has its distal end disposed--.

In claim 1 line 25, delete "body and with said" and insert --body and said--.

In claim 1 line 27, delete "suction, with the at least" and insert --suction, wherein the at least--.

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In claim 1 line 28, delete “end and with the at least one second conduit sized to comprise means whereby its distal end is disposed” and insert --end, wherein the at least one second conduit in its fully deployed state, with connection means at its proximal end has its distal end disposed--.

In claim 1 line 33, delete “channel and with said” and insert --channel and said--.

In claim 1 line 34, delete “gas, with the at least” and insert --gas, wherein the at least--.

In claim 1 line 36, delete “third conduit sized to comprise means whereby its distal end is disposed” and insert --third conduit in its fully deployed state, with connection means at its proximal end has its distal end disposed --.

In claim 1 line 41, delete “comprise means” and insert --comprise connection means--.

Reasons for Allowance

Claims 1-10, and 12-16 are allowed.

The following is an examiner’s statement of reasons for allowance: the prior art of record does not teach nor render obvious the overall claimed combination of an oropharyngeal device with a body having a distal end and a proximal end, the body sized such that when the distal end of the body is inserted into the mouth of the patient until the proximal end is disposed outside and adjacent to the patient’s mouth, wherein in a fully deployed state, the distal end is disposed within the pharynx above the epiglottis and at a distance from the epiglottis, and at least one conduit in its fully deployed state, with connection means at its proximal end has its distal end disposed within the pharynx above the epiglottis and at a distance from the epiglottis. Therefore, the invention defined in claim 1 is considered novel.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Moses (3,908,665), Connell (6,098,617), and Downing (4,821,715) are cited to teach endotracheal tube.

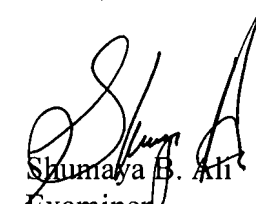
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-W-F 8:30am-5:00 pm.

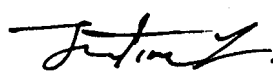
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Shumay'a B. Ali
Examiner
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5/14/2007


JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700
5/14/07